

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

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MINDY CALKINS, an individual; ALI AL-FARAJ, an individual; and KERRY MARK PROPERTIES, LLC, a Michigan limited liability company, for themselves and all those similarly situated,

Plaintiffs,

v.

Case No. 21-cv-62

HON. PAUL L. MALONEY

**** CLASS ACTION ****

KENT COUNTY, a Government Unit; PETER MACGREGOR in his individual and official capacity; KENNETH D. PARRISH, in his individual capacity; ALGER COUNTY, a Government Unit; PAMELA JOHNSON, in her individual and official capacity; ALLEGAN COUNTY, a Government Unit; SALLY L. BROOKS, in her individual and official capacity; ANTRIM COUNTY, a Government Unit; SHERRY A. COMBEN, in her individual and official capacity; BARAGA COUNTY, a Government Unit; JILL C. TOLLEFSON, in her individual and official capacity; ANNE T. KOSKI, in her individual capacity; BARRY COUNTY, a Government Unit; SUSAN VANDERCAR, in her individual and official capacity; BENZIE COUNTY, a Government Unit; MICHELLE THOMPSON, in her individual and official capacity; BERRIEN COUNTY, a Government Unit; SHELLY WEICH, in her individual and official capacity; BRET E. WITKOWSKI, in his individual capacity; CALHOUN COUNTY, a Government Unit; BRIAN W. WENSAUER, in his individual and official capacity; CASS COUNTY, a Government Unit; HOPE ANDERSON, in her individual and official capacity; CHIPPEWA COUNTY, a Government Unit; CARMEN FAZZARI, in her individual and official capacity; DELTA COUNTY, a Government Unit; SHERRY GODFREY, in her individual and official capacity; DICKINSON COUNTY, a Government Unit; LORNA CAREY, in her individual and official capacity; EATON COUNTY, a Government Unit; ROBERT ROBINSON, in his individual and

official capacity; EMMET COUNTY, a Government Unit; MARY MITCHELL, in her individual and official capacity; GOGEBIC COUNTY, a Government Unit; LISA HEWITT, in her individual and official capacity; GRAND TRAVERSE COUNTY, a Government Unit; HEIDI SCHEPPE, in her individual and official capacity; HILLSDALE COUNTY, a Government Unit; STEPHENIE KYSER, in her individual and official capacity; HOUGHTON COUNTY, a Government Unit; LISA MATTILA, in her individual and official capacity; INGHAM COUNTY, a Government Unit; ERIC SCHERTZING, in his individual and official capacity; IONIA COUNTY, a Government Unit; JUDITH A. CLARK, in her individual and official capacity; IRON COUNTY, a Government Unit; MELANIE CAMPS, in her individual and official capacity; KALAMAZOO COUNTY, a Government Unit; THOMAS WHITENER, in his individual and official capacity; MARY BALKEMA, in her individual capacity; KALKASKA COUNTY, a Government Unit; VALERIE THORNBURG, in her individual and official capacity; LAKE COUNTY, a Government Unit; KELLIE ALLEN, in her individual and official capacity; BRENDA L. KUTCHINSKI, in her individual capacity; LEELANAU COUNTY, a Government Unit; JOHN GALLAGHER, III, in his individual and official capacity; MACKINAC COUNTY, a Government Unit; JENNIFER GOUDREAU, in her individual and official capacity; MANISTEE COUNTY, a Government Unit; RACHEL NELSON, in her individual and official capacity; MARQUETTE COUNTY, a Government Unit; NICHOLAS BENSON, in his individual and official capacity; MASON COUNTY, a Government Unit; ANDREW R. KMETZ, IV, in his individual and official capacity; MENOMINEE COUNTY, a Government Unit; BARBARA A. PARRETT, in her individual and official capacity; MISSAUKEE COUNTY, a Government Unit; LORI COX, in her individual and official capacity; MONTCALM COUNTY, a Government Unit; JOANNE VUKIN, in her individual and official capacity; MUSKEGON COUNTY, a Government Unit; TONY MOULATSIOTIS, in his individual and official

capacity; NEWAYGO COUNTY, a Government Unit; HOLLY MOON, in her individual and official capacity; OCEANA COUNTY, a Government Unit; MARY LOU PHILLIPS, in her individual and official capacity; ONTONAGON COUNTY, a Government Unit; JEANNE M. POLLARD, in her individual and official capacity; OSCEOLA COUNTY, a Government Unit; TONIA HARTLINE, in her individual and official capacity; LORI LEUDEMAN, in her individual capacity; OTTAWA COUNTY, a Government Unit; AMANDA PRICE, in her individual and official capacity; ST. JOSEPH COUNTY, a Government Unit; KATHY HUMPHRIES, in her individual and official capacity; JUDITH L. RATERING, in her individual capacity; SCHOOLCRAFT COUNTY, a Government Unit; JULIE ROSCIOLI, in her individual and official capacity; VAN BUREN COUNTY, a Government Unit; TRISHA NESBITT, in her individual and official capacity; WEXFORD COUNTY, a Government Unit; and KRISTI NOTTINGHAM, in her individual and official capacity,

Defendants.

PLAINTIFFS' MOTION TO CONSOLIDATE CASES

MINDY CALKINS, ALI AL-FARAJ, and KERRY MARK PROPERTIES, LLC, individually and on behalf of a class of similarly situated individuals and entities (herein altogether and each individually the "Calkins Plaintiffs"), by and through counsel, VISSER AND ASSOCIATES, PLLC, hereby request that pursuant to Fed. R. Civ. P. 42(a)(2) this Court consolidate this case with *Frederick Grainger, Jr v County of Ottawa, et al.*, Case No. 19-cv-501, Western District of Michigan ("*Grainger*"). In support of this Motion, the Calkins Plaintiffs state:

1. On September 20, 2019, Frederick Grainger, Jr., filed a Second Amended

Complaint, for himself and all those similarly situated, against numerous counties located within the Western District of Michigan. (Case No. 19-cv-501, ECF No. 14 at PageID.277-303).

2. On February 5, 2021, Calkins filed a First Amended Complaint, for themselves and on behalf of a class of similarly situated individuals and entities, against the same county defendants that are named in the *Grainger* Complaint. (Case No. 21-cv-062, ECF No. 7 at PageID.46-70) (“*Calkins*”).

3. On March 5, 2021, Brian Behovitz filed a Motion to Intervene in the *Grainger* and to File His Supplemental Pleading, Certify the Class, Appoint Him as Class Representative, and Appoint Lead Counsel requesting oral argument on same. (Case No. 19-cv-501, ECF No. 133 at PageID.3364-3406).

4. As fully developed in the accompanying Brief in Support of this Motion, consolidation of *Grainger* and *Calkins* is appropriate because both cases “involve a common question of law or fact.” *See* Fed. R. Civ. P. 42(a)(2).

5. The *Grainger* Complaint asserts both state and federal claims, including claims under the state and federal constitutions for unpaid “just compensation” and other monetary damages against the county defendants for violations of Article 10 of the Michigan Constitution and of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, as well as a claim for unjust enrichment. (Case No. 19-cv-501, ECF No. 14 at PageID.277-303).

6. The *Calkins* Complaint is nearly identical to the legal and factual issues, conduct and claims presented in *Grainger*. The two actions allege similar, and in most cases, overlapping and identical claims with different named plaintiffs represented by different counsel. Each claim arises from similar core facts and identical questions of law and utilizes the same damage calculations.

7. *Calkins* backs the appointment of Messrs. Powell and Ellison as lead counsel,

because they are in the best position to represent the interests of the putative tax-foreclosure class.

8. Consolidating *Grainger* and *Wayside* will help bring order to chaos by streamlining numerous issues presented in the two cases, including discovery, dispositive legal motions, and settlement negotiations, and prevent duplicative efforts in each case.

9. *Calkins* incorporates here the Brief in Support of Plaintiffs' Motion to Consolidate Cases, which is filed concurrently with this Motion.

10. On March 22, 2021, counsel for *Calkins* sought concurrence to this Motion. Counsel for Defendants do not concur. Counsel for *Grainger* agrees that consolidating the two cases will best serve the putative class and concurs with this Motion.

For the reasons presented in this Motion and discussed in the Brief in Support of the Motion, *Calkins* respectfully requests that this Honorable Court consolidate this case with *Frederick Grainger, Jr v County of Ottawa, et al.*, Case No. 19-cv-501, Western District of Michigan.

Date: March 26, 2021

Respectfully submitted,

/s/ Donald R. Visser

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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2021, I electronically filed the foregoing document using the Court's electronic filing system, which will notify all counsel of record authorized to receive such filings.

/s/ Donald R. Visser
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VISSER AND ASSOCIATES, PLLC